

The court incorporates by reference in this paragraph and adopts as the findings and orders of this court the document set forth below. This document has been entered electronically in the record of the United States Bankruptcy Court for the Northern District of Ohio.



Dated: April 18 2005

Mary Ann Whipple
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

In Re:)	Case No. 02-34142
)	
Tendasoft, Inc.,)	Chapter 11
)	
Debtor.)	
)	JUDGE MARY ANN WHIPPLE

ORDER DENYING MOTION TO COMPEL PAYMENTS

This case came before the court for hearing on a Motion to Compel Payments in the Ordinary Course of Business (the “Motion”) filed by Traffic Tech, Inc. (“Traffic Tech”) [Doc. # 171]. Both counsel for Traffic Tech and for Debtor appeared in person. For the reasons that follow, the Motion will be denied.

BACKGROUND

Debtor’s Chapter 11 plan was confirmed on September 11, 2003. Article IX of the plan provides that the court will retain jurisdiction until the plan is fully consummated. Traffic Tech was not a prepetition creditor of Debtor. But in its Motion, it alleges that it is a post-confirmation creditor and further alleges that Debtor owes it \$51,571.71 for freight charges incurred in exchange for Traffic Tech brokering the transport

of various shipments for Debtor between April 29, 2004, and January 24, 2005.¹ Debtor disputes this amount. Traffic Tech seeks an order compelling Debtor to remit the amount allegedly due and owing to it.

DISCUSSION

As a threshold matter, the court must determine whether it has jurisdiction to hear and determine the claim set forth in this Motion. Traffic Tech contends that this court has jurisdiction to enter the order requested pursuant to 28 U.S.C. §§ 157 and 1334 and Article IX of the Debtor's Chapter 11 plan. The court disagrees.

The provision in Debtor's Chapter 11 plan that the court retains jurisdiction until the plan is fully consummated is not a source of this court's subject matter jurisdiction. Bankruptcy courts are courts of limited jurisdiction and have only the authority conferred on them by federal statutes. *Chao v. Hospital Staffing Services, Inc.*, 270 F.3d 374, 383 (6th Cir. 2001). Where a court lacks subject matter jurisdiction over a dispute, neither the court nor the parties by agreement can create it by simply providing for it in a plan of reorganization. *Resorts Int'l Fin., Inc. v. Price Waterhouse & Co., L.L.P. (In re Resorts Int'l Fin., Inc.)*, 372 F.3d 154, 161 (3d Cir. 2004); *Holly's, Inc. v. City of Kentwood (In re Holly's, Inc.)*, 172 B.R. 545, 555 (Bankr. W.D. Mich. 1994). The sole source of a bankruptcy court's jurisdiction is 28 U.S.C. § 1334. *See Chao*, 270 F.3d at 383.

Section 1334 provides that the district court has "exclusive jurisdiction of all cases under title 11" and "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 11 U.S.C. § 1334(a) and (b). This proceeding is neither a case under title 11 (which refers to the bankruptcy case itself), a case arising under title 11 (which refers to a cause of action created by a provision of title 11), nor a case arising in title 11 (which refers to proceedings that, by their very nature, could arise only in bankruptcy cases). *See Michigan Employment Sec. Comm'n v. Wolverine Radio Co., Inc. (In re Wolverine Radio Co., Inc.)*, 930 F.2d 1132, 1144 (6th Cir. 1991). As such, this case is not a core proceeding over which the court would have full adjudicative authority. *See* 11 U.S.C. § 157(b) (providing that a bankruptcy court may hear and determine all cases under title 11, and all core proceedings arising under title 11 or arising in a case under title 11). This court has jurisdiction in this case only if it is "related to" Debtor's bankruptcy case and then its authority, absent consent of all of the parties, would be limited to submitting proposed findings of fact and conclusions of law to the district court. *See* 11 U.S.C. § 157(c)(1).

¹ Traffic Tech represented to the court that an invoice for \$200 was submitted to Debtor on April 29, 2004, which of course would be pre-confirmation. Debtor disputes that any amount is due for pre-confirmation services. Traffic Tech acknowledges that all other amounts due arose from transactions post-confirmation.

The Sixth Circuit has held that a case is related to a bankruptcy case “if the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.” *Wolverine Radio Co.*, 930 F.2d at 1142. However, “a bankruptcy court’s ‘related to’ jurisdiction cannot be limitless.” *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995). Courts have recognized in a Chapter 11 context that bankruptcy court jurisdiction “is sharply reduced following confirmation.” *Cunningham v. Pension Benefit Guar. Corp.*, 235 B.R. 609, 617 (N.D. Ohio 1999) (quoting *In re Spiers Graff Spiers*, 190 B.R. 1001, 1006 (Bankr. N.D. Ill. 1996). “Post-confirmation jurisdiction is limited to matters concerning the implementation or execution of a confirmed plan.” *Id.*; *In re Resorts Int’l Fin., Inc.*, 372 F.3d at 167 (stating that “[a]t the post-confirmation stage, the claim must affect an integral aspect of the bankruptcy process—there must be a close nexus to the bankruptcy plan or proceeding”); *U.S. Brass Corp. v. Travelers Ins. Group, Inc. (In re U.S. Brass Corp.)*, 301 F.3d 296, 304 (5th Cir. 2002) (stating that “after a debtor’s reorganization plan has been confirmed, the debtor’s estate, and thus bankruptcy jurisdiction, ceases to exist, other than for matters pertaining to the implementation or execution of the plan); *Eastland Partners Ltd. P’ship v. Brown (In re Eastland Partners Ltd. P’ship)*, 199 B.R. 917, 919-20 (Bankr. E.D. Mich. 1996) (finding that the court’s role post-confirmation is “limited to matters involving the execution, implementation or interpretation of the plan’s provisions, and to disputes requiring the application of bankruptcy law”). Applying these principles in this case, the court finds no “related to” jurisdiction to determine Traffic Tech’s state law claims. With the exception of an invoice for \$200 submitted to Debtor on April 29, 2004, the balance of the \$51,571 that Traffic Tech claims is owed by Debtor was admittedly incurred post-confirmation. Traffic Tech did not file a claim in Debtor’s bankruptcy case and was not a pre-petition creditor of Debtor. Except possibly for the April 29 invoice, the Motion presented does not involve the execution of the Chapter 11 plan, does not require interpretation of the plan, and does not require the application of bankruptcy law. Traffic Tech is simply asking this court to decide its post-confirmation state law claim that is currently pending in state court. To the extent that its claim has any connection at all with Debtor’s bankruptcy case, such connection is too tenuous to support this court’s jurisdiction. *See Wolverine Radio Co.*, 930 F.2d at 1142 (recognizing that a tenuous connection to the bankruptcy estate would not satisfy the jurisdictional requirement). And Traffic Tech may not use a \$200 debt allegedly owed pre-confirmation to bootstrap jurisdiction over the balance of its claim for \$51,571.

Nevertheless, Traffic Tech argues that the court should exercise jurisdiction over its claim because it would be a creditor of the bankruptcy estate if Debtor’s Chapter 11 case is converted to a case under Chapter 7. The court finds this argument is without merit. There is no pending motion to convert to a Chapter 7 case. The court cannot base its jurisdiction on events that can only be seen through a crystal ball.

Moreover, to the extent that "related to" jurisdiction might exist, and to the extent it has such jurisdiction over Traffic Tech's \$200 claim, the court exercises its discretion to abstain from hearing the Motion. Permissive abstention is governed by § 1334(c) which provides as follows:

Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

28 U.S.C. § 1334(c)(1). The following factors are relevant to the abstention issue:

(1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention, (2) the extent to which state law issues predominate over bankruptcy issues, (3) the difficulty or unsettled nature of the applicable law, (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court, (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334, (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case, (7) the substance rather than form of an asserted 'core' proceeding, (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court, (9) the burden of [the bankruptcy court's] docket, (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties, (11) the existence of a right to a jury trial, and (12) the presence in the proceeding of nondebtor parties.

Federated Dept. Stores, Inc. v. White Flint Ltd. Partnership (In re Federated Dept. Stores, Inc.), 240 B.R. 711, 721 (Bankr. S.D. Ohio 1999) (quoting *In re Chicago, Milwaukee, St. Paul & Pacific R. Co.*, 6 F.3d 1184, 1189 (7th Cir. 1993)).

These factors weigh heavily in favor of abstention. First, there is no basis for federal jurisdiction, to the extent there is any at all, other than § 1334 and any relatedness to the main bankruptcy case is minimal or non-existent. Second, abstention will have no significant effect on the administration of the estate since, except for the contested \$200 claim, Traffic Tech is not a creditor of the estate. Third, state law issues clearly predominate as this is essentially a contractual dispute between the parties and they do not involve difficult or unsettled law. And fourth, Traffic Tech has already commenced an action that is presently pending in state court involving the identical issues presented in its motion. The court finds the likelihood is great that the commencement of this proceeding in bankruptcy court involves forum shopping by Traffic Tech. For all of these reasons, the court believes it appropriate to abstain from hearing the motion before it.

Finally, the court notes its procedural concerns in this case. In its motion, Traffic Tech seeks to recover money it claims is owed to it by Debtor. However, a proceeding to recover money or property is an adversary proceeding that is governed by Part VII of the Federal Rules of Bankruptcy Procedure. Fed.

K. Bankr. P. 7001(1). Traffic Tech's motion is, therefore, at a minimum, procedurally improper. Any such proceeding must be commenced by filing an adversary complaint with this court.

THEREFORE, for the foregoing reasons, good cause appearing,

IT IS ORDERED that the Motion to Compel Payments in the Ordinary Course of Business [Doc. # 171] be, and hereby is, **DENIED**.